

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W.R. Grace & Co., <i>et.al.</i> ,)	Case No. 01-1139 (KG)
)	
)	(Jointly Administered)
Reorganized Debtors.)	
)	
Tracie Barnes,)	
)	
Movant,)	Contested Matter
)	Re: _____
v.)	
)	
Maryland Casualty Company,)	
)	
Cross-Movant.)	

REQUEST FOR ENTRY OF STATUS QUO ORDER AND
CERTIFICATION OF COUNSEL

The undersigned counsel to the parties (collectively, “Parties”) to the above-captioned Proceeding (“Proceeding”) hereby certify as follows:

1. This Proceeding is initiated by the Movant seeking entry of a status quo order arising out of the multiple proceedings before this Court.
2. In *Ralph Hutt and Carl Osborn v. Maryland Casualty Company*, Adv. Proc. No. 14-50867 (“Hutt and Osborn Proceeding”), former Grace employees Hutt and Osborn filed an adversary complaint seeking a declaratory judgment that their proposed state court claims against MCC were not barred by the Asbestos PI Channeling Injunction. On October 17, 2016, this Court entered an Order (“Hutt and Osborn Order”) denying in part and granting in part cross-motions for summary judgment. *Hutt, et al. v. Maryland Casualty Company*, 2016 Lexis 3754 (Bankr. D. Del. October 17, 2016). The Hutt and Osborn Order is a final order.
3. In *Continental Casualty Company, et al. v. Jeremy B. Carr, et al.*, Adv. Proc.

No. 15-50766, CNA filed an adversary complaint seeking to enforce the Asbestos PI Channeling Injunction to prevent the defendants in that adversary proceeding from pursuing certain asbestos-related personal injury claims. On October 17, 2016, this Court entered an order granting CNA's motion for summary judgment and denying the defendants' motion to dismiss. *Cont'l Cas. Co. v. Carr (In re W.R. Grace & Co.)*, 2016 Bankr. LEXIS 3753 (Bankr. D. Del. Oct. 17, 2016). The defendants appealed that order.

4. In the Grace bankruptcy case, MCC filed *Maryland Casualty Company's Motion to Enforce the Permanent Channeling Injunction and for Sanctions* [D.I. 32999] ("Roberts Motion") requesting that the Court, *inter alia*, enforce the Asbestos PI Channeling Injunction to enjoin Rose Roberts ("Roberts"), Personal Representative of the Estate of James W. Roberts, deceased, from pursuing an action in Montana State Court. Roberts responded in opposition to the Roberts Motion and cross-moved (jointly with the Roberts Motion, the "Cross-Motions") for the Court to stay and/or dismiss the Roberts Motion without prejudice. The Court heard argument on the Cross-Motions on April 30, 2018.

5. On June 8, 2018, this Court, per Judge Gross, issued an Order stating that it would withhold ruling on the Roberts Cross-Motions pending the Third Circuit Court of Appeals' decision in the CNA Appeal. The CNA Appeal is back before this Court on remand. See *In re W.R. Grace & Co.*, 900 F.3d 126 (3d. Cir. 2018).

6. In *Barbara Hunt, Personal Representative for the Estate of Robert J. Hunt, deceased, et al. v. Maryland Casualty Company*, Adv. Proc. No. 18-50402, plaintiffs, who were not former Grace employees, sought declaratory relief based on issues similar to those raised in MCC's *Motion to Enforce the Permanent Channeling Injunction and for Sanctions*. Counsel for Plaintiff Hunt advised the Montana Court, *inter alia*, that the Roberts Cross-

Motions could determine whether Plaintiff Hunt's Claims in the Hunt State Court Action should proceed. That case was set for trial on February 5, 2019. Further, counsel for both MCC and Hunt advised the Montana Court that the Claims against MCC in the Hunt State Court Action should be stayed pending direction from this Court.

7. By a "Status Quo Order" dated June 27, 2018, in the Hunt Adversary Proceeding, the status quo of the rights between MCC and Hunt was preserved by an order staying proceedings in the Hunt State Court Action. (Doc 8 Filed 06/27/18).

8. Another claim against MCC and others brought by a plaintiff who was not a W.R. Grace employee is also pending in State District Court in the state court action *Barnes, et al. v. International Paper, et al.*, Lincoln County Cause No. DV-16-111, which case is set for trial beginning March 18, 2019.

9. As implicitly recognized by the June 8 Order, the issues raised in the Roberts Cross Motions, the Hunt State Court Action and Adversary Proceeding, and the Barnes district court proceeding appear intertwined. Thus, continuing litigation of the Barnes state court proceeding creates risks of prejudice to the parties, and may alter the status quo of the issues pending before this Court.

10. For the same reasons and rationale supporting the "Status Quo Order" with respect to Hunt, counsel for Barnes, counsel for Hunt and counsel for MCC all agree that trial of the claims of Barnes against MCC should be stayed to preserve the status quo between Barnes and MCC.

WHEREFORE, the Parties respectfully request that this Court enter the proposed Status Quo Order in the form attached hereto.

Dated: October 15, 2018

**GELLER SCALI BUSENKELL &
BROWN, LLC**

/s/ Michael G. Busenkell

Michael G. Busenkell (#3933)
1201 N. Orange Street, 3rd Floor
Wilmington, DE 19801
Telephone: (302) 425-5812
Facsimile: (302) 425-5814

and

MURTHA CULLINA LLP

Daniel C. Cohn
Taruna Garg
99 High Street
Boston, MA 02110
Telephone: (617) 457-4000
Facsimile: (617) 482-3868
dcohn@murthalaw.com
tgarg@murthalaw.com

Allan M. McGarvey, Esq.
MCGARVEY, HEBERLING,
SULLIVAN & LACEY, P.C.
345 First Avenue East
Kalispell, MT 59901
Telephone: (406) 752-5566

Attorneys for Tracie Barnes

CONNOLLY GALLAGHER LLP

/s/ Jeffrey C. Wisler

Jeffrey C. Wisler (# 2795)
1000 N. West Street, Suite 1400
Wilmington, DE 19801
Telephone: (302) 757-7300
Facsimile: (302) 658-0380

and

**ECKERT SEAMANS CHERIN & MELLOTT,
LLC**

Edward J. Longosz, II
Mark A. Johnston
Kennedy C. Ramos
1717 Pennsylvania Avenue, NW
12th Floor
Washington, DC 20006
(202) 659-6600 Telephone
(202) 659-6699 Facsimile
elongosz@eckertseamans.com
mjohnston@eckertseamans.com
kramos@eckertseamans.com

Attorneys for Maryland Casualty Company